

Congress of the United States
Washington, DC 20515

December 7, 2005

The Honorable Kenneth M. Mead
Office of Inspector General
United States Department of Transportation
400 7th St. S.W., Room 9210
Washington, D.C. 20590

Dear Mr. Mead:

This letter is a follow-up to your report of July 21, 2005 entitled *Chicago's O'Hare Modernization Program*, July 21, 2005 AV-2005-067.

As you know, the FAA has very recently (November 21, 2005) issued a "Letter of Intent" ("LOI") in the amount of \$337,200,000. We are troubled by a number of aspects of the FAA's action and take this opportunity to summarize our continuing and unresolved concerns.

I. The Improper Switch between the "Phase 1 Airfield" and the "Phase 1 Master Plan".

Before reiterating our unresolved concerns, we want to immediately focus on a central recommendation of your July 21, 2005 report and what is apparently a serious violation by FAA of its statutory mandate as well as your July 21, 2005 recommendations. In your July 21 report you state:

"The Department has a statutory mandate to ensure that sufficient funding exists to complete a project before committing AIP discretionary funds to that project. Fulfilling these mandates will require FAA to proactively and aggressively analyze the reasonableness and validity of the OMP financial plan. We are making this point because FAA has the legal obligation to assure that the project costs not paid for with AIP grants or PFC revenue will in fact be covered by non-Federal funds (such as airport-issued bonds) before approving the LOI for Phase 1."

Report AV-2005-067 at 12 (emphasis added)

As you know, the statutory mandate to which you refer is 49 U.S.C. §47106(a)(3)¹. The FAA has stated repeatedly in its November 21, 2005 Letter of Intent, and accompanying *Analysis and Review of City of Chicago's Application for Letter of Intent* AGL 06-01 (November 18, 2005) (hereafter "*FAA LOI Analysis and Review*") that FAA has met its statutory obligation and the above-quoted recommendation in your July 2005 report:

"Accordingly, in considering the financial commitment from non-U.S. government sources, the FAA is satisfied that enough money will be available to pay the costs of OMP Phase 1 that will not be paid by AIP grants."

Attachment F to *FAA LOI Analysis and Review*
Response to DOT Office of Inspector General July
21, 2005 Report, p. 1² (emphasis added)

There is a serious logical, financial and empirical discrepancy in the FAA's *LOI Analysis and Review*. FAA either inadvertently or deliberately mixes up two very distinct projects with very distinct costs and impacts, i.e., the "**Phase 1 Airfield**" project vs. the "**Phase 1 Master Plan**" project:

1. The "**Phase 1 Master Plan**" project is the project on which the FAA bases its conclusion that the benefits exceed the cost as required under 49 U.S.C. § 47115(d)(1)(B)³ and its other statutorily required findings, e.g., that the "project" will "enhance system wide airport capacity significantly." 49 U.S.C. §47110(e)(2)(C)⁴. The key facts to keep in mind as to the "**Phase 1 Master Plan**" are that it necessarily includes elements (e.g., the Lima Lima Taxiway, the Western Satellite Concourse, adjacent to United's Terminal One, the portion of the people mover to get to the Western Satellite Concourse, the Concourse K extension, and a variety of other necessary components) that the FAA acknowledges are necessary and essential to support the FAA's justification for the project under its statutory mandates. The FAA has

¹ "The Secretary of Transportation may approve an application under this subchapter for a project grant only if the Secretary is satisfied that—...(3) enough money is available to pay the project costs that will not be paid by the United States Government under this subchapter." (emphasis added)

² Similar categorical declarations are contained throughout the FAA LOI materials: "Accordingly, in considering the financial commitment from non-U.S. government sources, the FAA is satisfied that enough money will be available to pay the costs of OMP Phase 1 that will not be paid by AIP grants." *FAA LOI Analysis and Review*, Id. at 20; "As described under the discussion of this statutory criterion above, the FAA has determined that the City will be able to finance the non-Federal share of OMP Phase 1, the subject of the current LOI application." Id at 23.

³ As stated in the FAA's *Policy for Letter of Intent Approvals Under the Airport Improvement Program*, "[T]he proposed project must have present value benefits that exceed present value costs." 59 FR 54482 at 54484 (October 31, 1994). (emphasis added)

⁴ A selection of FAA quotes from FAA's LOI documents confirming that FAA's entire benefit-cost analysis and conclusions used to support its LOI decision is premised on the full "**Phase 1 Master Plan**" and not the "**Phase 1 Airfield**" is set forth in Section II of this letter, *infra*.

repeatedly stated that all of the elements of the "**Phase 1 Master Plan**" (as opposed to the lesser project known as the "**Phase 1 Airfield**") are needed in order for the economic benefits to exceed the costs — a fundamental requirement before AIP discretionary funds (or an associated LOI) can be awarded. As discussed below, the costs of the "**Phase 1 Master Plan**" (estimated at \$3.9 billion in 2005 dollars exclusive of the cost of the required people mover to the Satellite Concourse) are far higher than the costs of the "**Phase 1 Airfield**" (estimated at 2.88 billion in 2005 dollars) — a differential of over \$1 billion dollars⁵.

2. Despite these huge cost differentials, FAA switched projects and used the much lower cost "**Phase 1 Airfield**" when FAA claimed it was following the recommendation of your July 2005 report and the statutory mandate of 49 U.S.C. §47106(a)(3) to reach a finding that sufficient non-federal funds will be available to pay for that portion of the project not funded by the AIP funds. In making that statutory finding (*i.e.*, the §47106(a)(3) that sufficient non-federal funds are available to complete the project) the FAA used the much lower \$2.88 billion project cost of the "**Phase 1 Airfield**" rather than the \$4 plus billion dollar cost of the "**Phase 1 Master Plan**" (which FAA used as the basis for its statutory conclusions that project benefits exceed costs and that the project will "enhance system wide airport capacity significantly")⁶.

⁵ The "Phase 1 Master Plan" includes as necessary elements the Lima Lima Taxiway, the Western Satellite Concourse, adjacent to United's Terminal One, the portion of the people mover to get to the Western Satellite Concourse, and, the Concourse K extension and a variety of other necessary components. (See FAA admissions, quoted, *infra*.) With the exception of the critical people mover connection to the Western Satellite Concourse (cost not disclosed) these elements and all other elements of the "Phase 1 Master Plan" (and the costs of these elements) are set forth in Table B-1, p. 44 of the September 27, 2005 Chicago Supplemental Benefit-Cost Study. The total cost of the "Phase 1 Master Plan" in 2001 dollars (the values used in the September 27, 2005 Chicago Benefit-Cost Study) is \$3.53 billion (exclusive of the necessary portion of the People Mover to the Satellite Concourse) vs. \$2.55 billion for the Phase 1 Airfield. In 2005 dollars the difference is \$3.9 billion (exclusive of the necessary portion of the People Mover to the Satellite Concourse) and \$4 plus billion for the "Phase 1 Master Plan" (including the necessary portion of the People Mover to the Satellite Concourse) vs. \$2.88 billion for the "Phase 1 Airfield".

⁶ In Attachment B to the *FAA LOI Analysis and Review*, the FAA lists the cost of "OMP Phase 1" as \$2.88 billion. Through inadvertence or otherwise, the FAA fails to clarify that this "OMP Phase 1" at a cost of \$2.88 billion is just the "OMP Phase 1 Airfield". As discussed, *infra*, the FAA's LOI documents completely fail to conduct the required statutory analysis and finding as to whether there are sufficient funds other than AIP funds to pay for and construct the \$3.9 billion (in 2005 dollars) "**Phase 1 Master Plan**". The \$3.9 billion figure for the "**Phase 1 Master Plan**" does not include a portion of the people mover which FAA says is necessary in Phase 1 to connect the Satellite Concourse to the United terminal. The estimated cost of the total people mover exceeds \$450 million and some portion of that cost should be allocated to the "**Phase 1 Master Plan**".

It is the "**Phase 1 Master Plan**" that serves as the basis for several of the other critical statutory findings that FAA purports to make in its LOI documentation, *e.g.*, determinations of additional capacity (§47110(e)(2)(C)) (18% claimed capacity increase in flights dependent on ability of airport terminals to handle added passengers); the determinations as to the project's effect on the overall capacity (§47115(d)(1)(A)); and the required finding that economic benefits exceed economic costs

More cynical observers of human nature might characterize this action by FAA as a classic “bait and switch” — holding out the lower cost “**Phase 1 Airfield**” as the basis for claiming that adequate project financing is available while in reality knowing that the much higher cost “**Phase 1 Master Plan**” contains the components necessary to achieve the results on which FAA bases its other mandatory statutory findings.

It is clear that there is not sufficient funding for the FAA to conclude that there will be sufficient non-AIP funds available to build those portions of the “**Phase 1 Master Plan**” not funded with AIP funds. Indeed, as shown in Table One (enclosed) comparing funding needs with funding sources, it is clear that there is insufficient funding in place to insure the construction of even the “**Phase 1 Airfield**”. But even if there were sufficient non-AIP funds for the “**Phase 1 Airfield**”, it would be improper and illegal for FAA to award the AIP Letter of Intent (and make several critical statutory findings) based (by FAA’s own repeated admission) on the “**Phase 1 Master Plan**”; and then switch to the lower cost “**Phase 1 Airfield**” for the required statutory determination under 49 U.S.C. §47106(a)(3) — *i.e.*, that there are sufficient funds other than AIP funds to pay for and complete the project⁷.

II. The Bait and Switch Problem between the “Phase 1 Airfield” vs. the “Phase 1 Master Plan” Extends to FAA’s Other Statutorily Mandated Findings.

A. FAA’s LOI required finding that the project benefits exceed the costs is only for the “Phase 1 Master Plan”.

As you know, FAA is required by 49 U.S.C. § 47115(d)(1)(B) and FAA’s *Policy for Letter of Intent Approvals Under the Airport Improvement Program* to find that project for which AIP discretionary funds are sought has economic benefits greater than the projects costs: “[T]he proposed project must have present value benefits that exceed present value costs.” 59 FR 54482 at 54484 (October 31, 1994). (emphasis added).

The FAA in its LOI concluded that “the project” benefits exceeded the project costs. “The FAA has considered the benefit and cost of the project and concludes that the project is cost beneficial over a range of parameters.” *FAA LOI Analysis and Review* at p. 17. (emphasis added)

However, the FAA bases its conclusion in the LOI documentation that the benefits of the project exceed the costs — and that an LOI is therefore justified under 49 U.S.C. §47110(e) and the related benefit-cost requirement of 49 U.S.C. §47115

(§47115(d)(1)(B) as implemented by FAA’s *Policy for Letter of Intent Approvals Under the Airport Improvement*, 59 FR 54482 at 54484 (October 31, 1994).

⁷ FAA makes the claim that the airlines have given Majority In Interest (MII) approval for Phase 1. But that approval is only for the “**Phase 1 Airfield**” — not for the additional necessary costs of the “**Phase 1 Master Plan**”. Even as to the “**Phase 1 Airfield**”, the MII approval is conditioned on both AIP approval and necessarily obtaining the more than \$1 billion in PFC funding — neither of which is legal for the reasons described in this letter. We emphasize for clarity that the \$1 billion in identified PFC funding request is solely for the “**Phase 1 Airfield**”. Neither FAA nor Chicago has identified any funding source (including additional PFCs) for the more than \$1 billion additional necessary incremental cost.

(d)(1)(B)⁸ — on the project the FAA calls the “**Phase 1 Master Plan**” project. As stated above, the Phase 1 Master Plan includes as necessary elements the Lima Lima Taxiway, the Western Satellite Concourse, adjacent to United’s Terminal One, the portion of the people mover to get to the Western Satellite Concourse, the Concourse K extension and a variety of other necessary components.

Nowhere in the FAA documentation is there an analysis or a finding that the “**Phase 1 Airfield**” — standing alone — meets the required benefit-cost requirement. The reason for the FAA’s silence is apparent. Without the terminals and other additional elements of the “**Phase 1 Master Plan**”, Chicago cannot accommodate the forecast passenger growth that is a central premise of the September 27, 2005 Chicago Supplemental Benefit-Cost Study. The FAA repeatedly makes this point in the LOI documentation:

“Detailed review of the supplemental analysis [the September 27, 2005 Chicago Benefit-Cost Study] was limited to Total Master Plan Phase 1. While the benefits are identical to those reported for OMP Airfield Phase 1, Total Master Plan Phase 1 includes all relevant costs (e.g., costs associated with the Lima-Lima taxiway, the Western Terminal Concourse, and the Concourse K extension) necessary to provide the benefits being measured in the BCA, even though some of these projects are not included within the scope of the LOI.”

FAA LOI Analysis and Review at 16 (emphasis added)

“Our review of the supplemental analysis is limited to *Master Plan Phase 1*. While the benefits measured are identical to those reported for *OMP Airfield Phase 1*, Master Plan Phase 1 includes the relevant set of costs (e.g., costs associated with the Lima-Lima taxiway, the Western Concourse, and the Concourse K extension) necessary for a proper evaluation of the proposed project because the benefits from OMP Phase 1 will not be fully realized unless this non-LOI construction is also accomplished.”

Memorandum from Bob Robeson to Barry Molar,
October 5, 2005, p. 2 in Attachment E to *FAA LOI Analysis and Review* (emphasis added)

“It appears that the BCA does not include all of the relevant costs associated with the benefits derived under OMP Phase-1. Because the delay calculations associated with the OMP Phase-1 alternative appear to [be] dependent, in part, on two projects - the Lima-Lima Taxiway and a portion of the Western Terminal Complex -- for

⁸ As stated in the FAA’s *Policy for Letter of Intent Approvals Under the Airport Improvement Program*, “[T]he proposed project must have present value benefits that exceed present value costs.” 59 FR 54482 at 54484 (October 31, 1994). (emphasis added)

which their costs have been excluded from the analysis, the analysis must be adjusted to reflect this dependency. To correct this shortcoming, these costs should be included in the analysis, regardless of whether the projects are eligible for AIP funding."

Id at Attachment 1 to Memorandum from Bob Robeson to Barry Molar, October 5, 2005 (emphasis added)

"On September 27, 2005, the City submitted a Supplemental BCA for Master Plan Phase 1 development that produced a benefit/cost ratio of 4.6. While the benefits are identical to those reported for OMP Airfield Phase 1, Master Plan Phase 1 includes the relevant set of costs (e.g., costs associated with the Lima-Lima taxiway, the Western Concourse, and the Concourse K extension) necessary for a proper evaluation of the proposed project."

FAA LOI Analysis and Review, Attachment F, Response to DOT Office of Inspector General July 21, 2004 Report. (emphasis added)

We have additional concerns with both the substance and the questionable procedure used by FAA to reach its conclusions on the benefit-cost issue which we will address below.

B. FAA's Statutory Findings For Other Elements of the LOI are Also Based on the "Phase 1 Master Plan".

It is equally clear that FAA used the "**Phase 1 Master Plan**" (and the necessary elements and costs of that project) to reach its findings on other elements of the FAA's statutory findings required for the LOI determination. For example 49 U.S.C. §47110(e)(2) requires that FAA find that the "project" be one that will "enhance system-wide airport capacity significantly".

FAA found that the "project" met this requirement:

"These improvements are not just as a result of the Total OMP and Total Master Plan components but also include enhancements that are solely attributable to the Phase 1 OMP. Phase 1 results in an 18 percent increase in traffic over the existing airfield without increasing average annual delays. By interpolating the demand curves developed for the preferred alternative, the City showed an increase from approximately 974,000 annual operations to 1,150,000 annual operations by 2016 at the current average annual delay level. This additional throughput in passengers resulting from the increased capacity of the new airfield configuration formed the basis of the City's supplemental Benefit Cost Analysis (BCA) that showed substantial local benefits and also identified downstream system benefits that were not specifically analyzed by the City."

FAA LOI Analysis and Review at 12 (emphasis added)

While FAA did not expressly identify which “project” to which FAA was referring when it used the term “Phase 1 OMP” it is clear that the passenger growth — which necessarily forms the basis of any claim of increased operations (*i.e.*, to have more operations, all other things being equal, one needs more passengers) and which forms the basis of the BCA — will not occur unless the facilities in the “**Phase 1 Master Plan**” are in place. FAA never identifies any numerical value for any increased passengers that would be the result of the “**Phase 1 Airfield**” vs. the “**Phase 1 Master Plan**”.

C. The Serious Error in the Modeled Delays Attributed to the Existing Airport.

Though FAA’s LOI inadvertent or intentional switching between two different projects called “Phase 1” is sufficient in itself to create fatal flaws in the FAA’s required statutory findings, it is important to bring to the Inspector General’s attention the very serious errors and misstatements by FAA as to the modeled delays for the existing O’Hare Airport and the FAA’s predictions of those delays in future years if runway expansion does not take place. We mention this respectfully, because, it is apparent that FAA appears to have provided your staff with incomplete or incorrect information as to modeled delays for the existing O’Hare (and the delays that would occur at the existing airport in the 2007-2018 time frame), misinformation which was innocently accepted by your staff and included in your July 21, 2005 report⁹.

The claimed delay benefits of “**Phase 1 Airfield**” vs. the “**Phase 1 Master Plan**” (or even the full build OMP-Master Plan) are premised fundamentally on an FAA directed computer modeling effort (TAAMs) based on an input set of operating conditions input for the existing O’Hare for the year 2003. The TAAMs 2003 modeling of the existing airport (15.2 minutes Average Annual Delay for 2003) — and most importantly the inset of operating conditions used for the 2003 TAAM modeling — was then extended to the years 2007, 2009, 2013, and 2018 for which FAA then made assertions as to the level of delay that would be experienced at the existing O’Hare in those future years.

The central problem with these delay claims is that they do not reflect a consistent and honest application of modeling assumptions and inputs. The available modeling results (at similar levels of daily operations) from a whole series of FAA and Chicago modeling efforts demonstrate that modeling results for the existing O’Hare have consistently and uniformly been below 10 minutes AAW. These modeling results include the FAA’s TAAMs results for the 2002 airfield (9.3 minutes), the 2003 TAAM modeling performed by Chicago through Ricondo and Associates (the same contractor who performed the FAA TAAM modeling) (8.9 minutes), the 2002 FAA-Chicago Delay Task Force modeling effort (9.9 minutes) and the 2003 FAA modeling of the existing O’Hare by the FAA’s Hughes Technical Center (9.3 minutes with regional jet increase).

⁹ As discussed in this letter the existing and projected delays for the existing O’Hare (both currently and as projected for 2007-2018) described at pp 16-18 of your July 21, 2005 report are based on outdated and incorrect modeling inputs to the TAAMs model.

FAA stated in the FEIS that the reason for the very large jump in the modeled delay levels between the TAAM 2002 modeling and the TAAM 2003 modeling were based on restrictions FAA imposed on efficient operating configurations at O'Hare in 2003. However, in August, 2005, Chicago wrote FAA and stated that the FAA had again allowed use of many of these efficient operating configurations¹⁰. Chicago stated that these changes and other improvements had resulted in a significant decrease in delays over conditions that had previously existed — previous conditions which presumably included the operating limitations that — when input to the TAAM model — resulted in the 15.2 minute AAW delay for the 2003 TAAM model and which resulted in the very high delay levels used for the existing airport for the future years 2007, 2009, 2013, and 2018.

We have repeatedly asked that the existing O'Hare be modeled under the TAAMs model with operating conditions that reflect the conditions referenced by Chicago in its August 1, 2005 submission. Further, we have asked that the TAAM model for the existing O'Hare be run with the input assumptions including the FAA scheduling order of 88 arrivals per hour.

There is no question that if the TAAM model were run with these input conditions, the modeled delay levels would be far less than the 15.2 minutes AAW modeled delay (2003) used by FAA to project delays for the existing O'Hare for 2007, 2009, 2013, and 2018. For FAA to continue to use outdated modeling inputs that — by Chicago's own admission — do not reflect current conditions at the existing O'Hare is indefensible. Further, by ignoring the current conditions at O'Hare, while rigidly adhering to the no longer existing 2003 conditions — FAA's TAAMs predictions for 2007, 2009, 2013, and 2018 for the existing O'Hare dramatically overstate the existing and prospective delays for the existing airfield.

This failure to include in the TAAM modeling effort the existing operating configurations and conditions at the existing O'Hare (including the scheduling order) —

¹⁰ As stated by the City of Chicago in comments filed with FAA on August 1, 2005:

"In light of technological and procedural developments and new flight arrival and departure data, the City believes that the flight limits in the FAA's August 18, 2004 Order as extended by the FAA's March 25, 2005 Order (FAA-2004-16944) ("FAA Order") do not reflect the full capacity available at O'Hare. First, the FAA Order was crafted before the procedural change that allowed increased arrivals and decreased delays for arrival Plan B. [footnote omitted] This change to Plan B was estimated to reduce delays by 24,000 hours annually and save the airlines over \$17M annually. ..."

"Third, the MD-80's recent reclassification and approval for Land and Hold Short Operations ("LASHO") on Runway 22R should increase O'Hare's arrival rate by at least 5 % when Plan W9 is in effect. [footnote omitted] This change also should allow for the implementation of Hybrid Plan B, [footnote omitted] which is estimated to reduce delays by 23,000 hours and save the airlines over \$16 million dollars annually."

"According to the FAA's data, during the first eight months that the FAA Order was in effect, arrival delays were reduced by 27%, 7% above the FAA's target of 20%."

City of Chicago comments in FAA. Docket FAA-2004-16944
In the Matter of Operating Limitations at Chicago O'Hare
International Airport. August 1, 2005 (emphasis added)

and applying configurations and conditions into the modeling of the existing O'Hare for the year 2007, 2009, 2013, and 2018 — infects with serious error every part of the benefit side of the benefit-cost analysis and statutory justifications used by FAA. The failure results in: 1) serious and material overstatement of delays that will be experienced with the existing airfield in future years; 2) serious and material overstatement of the incremental capacity to be gained by any of the expansion proposals for O'Hare (be it Phase 1 Airfield, Phase 1 Master Plan, or the full build OMP-Master Plan); and 3) serious and material overstatement of the economic benefits that can be claimed for any alternative.

III. Bait and Switch Between Phase 1 and the full build OMP.

Your office's July 21st report points out the need for FAA to be certain that Phase 2 will be completed in order to be assured that the "full benefit" of the OMP is realized.

We respectfully disagree that Phase 2 OMP will provide any lasting delay reduction benefits. Using either 2003 or 2004 TAF (Terminal Area Forecasts) it is clear that even the full build Phase 2 will exhaust its capacity and return to unacceptable levels of delay within a short time after it is built.

But regardless of any differences we may have as to the efficacy of Phase 2, your office correctly emphasized that FAA perform due diligence to be assured that Phase 2 will be funded since any Phase 1 would not provide significant additional capacity.

Indeed, throughout FAA's EIS process FAA rejected any detailed discussion of Phase 1 — and any alternatives to Phase 1 — claiming that the only project that met "purpose and need" (*i.e.*, meeting "unconstrained demand" and reducing delays to acceptable levels) was the full build OMP.

In its LOI documents, the FAA completely reverses itself and abandons any attempt to provide economic justification for the full build OMP-Master Plan. Instead, FAA argues that the "only project" before it is some version of Phase 1.

"As you know, OMP Phase 1 is "the project" under consideration for funding, rather than the complete OMP that was the subject of the FAA's EIS and ROD. Because the LOI is sought for only Phase 1, it is necessary to confine our analysis of the LOI application to Phase 1 only."

FAA LOI Analysis and Review, Attachment E,
October 25, 2005 memorandum by Joseph Hebert¹¹
(emphasis added)

¹¹ In the October 5, 2005 memorandum in the same Attachment E, Mr. Robert Robeson of the FAA states that the "Phase 1" project that must be analyzed and evaluated is the full Phase 1 Master Plan. "It appears that the BCA does not include all of the relevant costs associated with the benefits derived under OMP Phase-1. Because the delay calculations associated with the OMP Phase-1 alternative appear to [be] dependent, in part, on two projects - the Lima-Lima Taxiway and a portion of the Western Terminal Complex -- for which their costs have been excluded from the analysis, the analysis must be adjusted to reflect this dependency."

This sudden switch from singing the praises of the full build OMP-Master Plan to attempting to justify funding on Phase 1 only (and Phase 1 Master Plan at that) is extremely disingenuous.

If Phase 1 Master Plan is the only plan for which FAA can muster the requisite mandatory statutory findings (*e.g.*, that benefits exceed costs) then FAA should be exploring alternatives to Phase 1 Master Plan. This is particularly important for several reasons:

1. First, it is clear that Chicago cannot assemble the financing for **"Phase 1 Master Plan" or the "Phase 1 Airfield"**. Even the most tolerant financial analysis shows: a) that FAA cannot award the \$330 million LOI for a variety of reasons (including the fact that the LOI funding is for the "Phase 1 Airfield" but the benefit-cost finding is for the Phase 1 Master Plan; b) FAA cannot authorize the more than \$1 billion PFC funding needed for the "Phase 1 Airfield" (at the \$2.88 billion estimate) for the same or similar reasons, c) Chicago cannot (or at least should not be able to) bond the balance of the GARBs for the "Phase 1 Airfield" without the AIP and PFC funds), and d) Chicago has no AIP, PFC, or MII approved funding for the more than \$1 billion additional funds (above and beyond the costs of the "Phase 1 Airfield") needed for the **"Phase 1 Master Plan"**. Moreover, that \$1 billion shortfall does not include whatever portion of the more than \$450 million people mover system is needed to connect the required Satellite Terminal to United's Terminal One.
2. Second, FAA has rejected discussion or exploration of any other runway options on the airfield on the ground that they do not match the results of the full build OMP-Master Plan. We have doubts as to whether full build OMP-Master Plan provides the incremental increases in capacity or temporary delay reduction that are claimed for full build OMP-Master Plan, but the full build OMP-Master Plan is not — as emphasized by the FAA — the project up for decision. That project is the **"Phase 1 Master Plan" or the "Phase 1 Airfield"** — and FAA cannot provide required statutory findings and justification for either, let alone the requisite financing. If FAA cannot identify the requisite (and legal) elements of financing for the **"Phase 1 Master Plan" or the "Phase 1 Airfield"**, how can FAA claim that financing for the \$15.4 billion full build OMP-Master Plan is assured?
3. With the smaller **"Phase 1 Master Plan" or the "Phase 1 Airfield"** as the focus, it becomes even more imperative that the FAA look at other less destructive runway alternatives — especially runway alternatives that do not destroy either St. Johannes Cemetery or the homes, businesses and park lands in Bensenville and Elk Grove Village. The O'Hare controllers, speaking through Mr. Craig Burzych, have identified runway alternatives that would preserve St. Johannes and the homes, businesses and park lands in Bensenville and Elk Grove Village. Mr. Joseph Del Balzo, former Acting Administrator of the FAA, along with other prominent aviation experts, has put forward runway alternatives that would also preserve St. Johannes and the homes, businesses and park lands in Bensenville

and Elk Grove Village. Thus far FAA has summarily rejected those alternatives — even though FAA concedes that several appear “feasible” — solely on the ground that these alternatives do not produce the benefits of the full build OMP-Master Plan. For FAA to continue to take this irrational stand — when FAA and Chicago cannot and have not justified the full build OMP-Master Plan on any statutory basis (including the required benefit-cost test) and when FAA cannot justify either “**Phase 1 Master Plan**” or the “**Phase 1 Airfield**” under the applicable statutory mandates — is inexcusable and unconscionable.

4. The flaws in the FAA’s LOI analysis extend into FAA’s obligations under the federal Religious Freedom Restoration Act and the First Amendment Free Exercise Clause. The FAA has acknowledged that FAA’s funding of Phase One will create a “substantial burden” on the exercise of religious rights by the St. John’s religious community. While now washing its hands of any claimed expertise in First Amendment rights, FAA continues to assert that St. Johannes Cemetery must be destroyed because the full OMP must and will be built. In light of the flaws outlined above, surely the FAA’s callous indifference to the religious rights of this community and FAA’s disregard of its own federal RFRA responsibilities should be closely examined. Re-examining this issue is particularly appropriate and necessary given FAA’s double “bait and switch” actions here — first as between “**Phase 1 Master Plan**” or the “**Phase 1 Airfield**” and second, shifting from the full build OMP-Master Plan as the center of the universe to justify this “project”.

IV. Other Outstanding Issues.

Thank you for your patience in reading through our lengthy concerns. Before closing we wish to reiterate several additional related areas of concern that will affect your analysis:

1. **The Forecast Issue.** FAA continues to rely on the outdated 2002 TAF. It has not subjected the full build OMP-Master Plan to a rigorous analysis under either the 2003 TAF or the 2004 TAF¹². Moreover, as to the 2004 TAF, legitimate and serious concerns have been expressed about manipulation of the 2004 TAF so that the 2004 TAF did not represent a truly “unconstrained” forecast, as is FAA’s stated intent in the TAF forecast. These concerns deserve your investigation.
2. **The Base Case (i.e., existing O’Hare) Delay Issue.** We have already discussed this issue above. The error here is central to the FAA’s entire analysis. Please obtain TAAM delay results for the existing airport with the operating conditions and procedures mentioned in the Chicago August 1, 2005 submission to the FAA as well as the FAA scheduling limitations. This delay modeling should be

¹² FAA concedes that use of the 2004 TAF would likely produce significantly different results than the 2002 TAF. “The change in the composition of flights in the 2004 TAF may significantly affect the TAAM delay and travel time estimates and may also affect environmental results.” E-Mail from FAA to City of Chicago, dated September 23, 2005, document file “LOI-BCA 17430.pdf” produced by FAA on October 26, 2005 (emphasis added)

performed for the current year and the 2007, 2009, 2013 and 2018 time frame (as well as any additional time frame of analysis developed pursuant to item #3 below).

3. **The Time Period of Analysis.** FAA limited the period of analysis in the EIS to project start plus 5 years (2018 for full build OMP-Master Plan). The LOI benefit-cost and economic analysis — including the required analysis of alternatives — require a period of analysis of 20 years from project start. FAA avoided examining both the impacts and alternatives of the full build OMP-Master Plan under this requirement simply by refusing to conduct an analysis of the full build OMP-Master Plan under the FAA's own economic analysis benefit-cost procedures. If FAA is going to rely simply on Phase 1 (whichever Phase 1 FAA asserts) then FAA should be required to abandon its use of full build OMP-Master Plan as some hypothetical chimerical goal which precludes rational analysis of lesser scale alternatives to Phase 1. If however, FAA wishes to continue its mechanical reliance on this highly speculative full build OMP-Master Plan option, then FAA should be required to subject full build OMP-Master Plan to a rigorous analysis under the 20 year time frame used in FAA benefit-cost analysis.
4. **The Acceptable Delay Level.** FAA has used as a level of "acceptable" delay a limit of 15 minutes Average Annual All Weather (AAAW) delay. This 15 minutes AAW is far greater than used by FAA at any given airport. Indeed, FAA's own economic consultant, GRA, told DOT in the 1995 HDR report that AAW delays of 8-10 minutes would cause extreme disruption and that new facilities should be under construction when delays reached 10 minutes AAW. FAA has illustrated the problem between what appear to be modest AAW delays levels and corresponding extreme IFR delays in its recent ROD¹³. FAA

¹³ "The average annual all-weather (all conditions) delay per operation is a convenient way to describe airport efficiency because it is a single number. Using that single number can, however, obscure the impact that may occur when adverse weather requires instrument flight rules (IFR) operations. At most airports, good weather conditions that permit use of visual flight rules (VFR) occur a majority of the time. Because airlines typically schedule operations for the prevalent weather conditions, and are not able to modify schedules in response to varying weather conditions, aircraft delay is especially severe when the IFR capacity of an airport is substantially lower than its VFR capacity. As a result, total NAS aircraft delay is clearly influenced by IFR operations at key airports. When an airport is a major airline connecting hub or when the airport contains multiple hubbing operations, the adverse weather (IFR) delays at the airport affect the entire NAS."

"At O'Hare, the adverse weather (IFR) arrival acceptance rate does not meet the current arrival demand. This IFR acceptance rate is partially limited by the intersecting or converging nature of the existing runway system. While the overall average annual delays were modeled using the Total Airport and Airspace Modeler (TAAM) to be 9.3 minutes per operation in 2002, adverse weather (IFR) delays averaged about 50.1 minutes per operation. In contrast, good weather (VFR) delays were modeled using TAAM and averaged about 7.1 minutes per operation. This discrepancy between the airfield's good and adverse weather performance has a dramatic effect on the NAS."

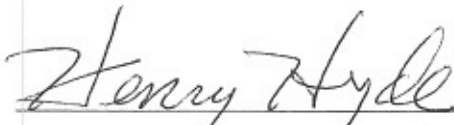
should be required to identify the IFR delays that will occur with Phase 1 (either "Phase 1 Airfield" or "Master Plan Phase 1") and full build OMP-Master Plan at various traffic levels under a current correct TAF for a period of analysis that extends 20 years from project start.

5. **The Questionable Benefit-Cost Procedures followed by FAA.** Under separate cover, counsel for the communities of Bensenville and Elk Grove Village and the St. John's religious community have sent you their October 28, 2005 letter to FAA describing the questionable procedures followed by FAA in literally co-authoring a new Benefit-Cost Study with Chicago. FAA acknowledges in its LOI documents that the Benefit-Cost Study originally submitted by Chicago failed to demonstrate that benefits exceeded costs — a statutory requirement for an LOI award. As outlined in the October 28, 2005 letter by project opponents, FAA appears to have stepped far beyond any conceivable permissible bounds in its role as an adjudicator and literally helped "write the brief" of one of the opposing parties. We ask that you examine all documents relating to this questionable process and identify all facts relating to what occurred.

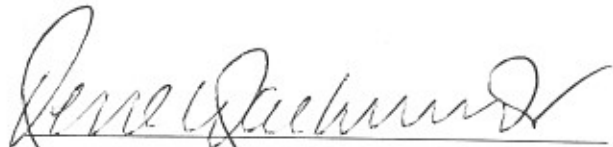
Conclusion

Thank you for your exemplary past service to the Nation and the Congress on these critical issues and we look forward to hearing from you on the concerns outlined in this letter.

Sincerely yours,



Congressman Henry Hyde
Member of Congress



Jesse Jackson, Jr.
Member of Congress

Enclosure

TABLE ONE

Phase I Airport and Phase I Master Plan Committed Financing

Total Cost ¹	Funding Sources	Funding amount ²	Funding Commitment
Phase I <u>Airport</u>			
Phase I <u>Airport</u> \$2.88 billion			
	AIP Entitlement	56	Partly from November 21, 2005 FAA LOI Letter
	AIP Discretionary	5	unknown
	AIP LOI	300	November 21, 2005 FAA LOI Letter
	PFC PAYGO	51	Not applied for or approved
	PFC BONDS	599	Not applied for or approved ³
	GARBS	1,869	Only partial bond proceeds
Current funding shortfall for Phase I <u>Airfield</u>			Over one billion in PFC funds – PFC application will have to be based on same analysis as LOI decision – <i>i.e.</i> , “Phase I <u>Master Plan</u> ” ⁴ Unclear whether GARB bonds can or should be sold without disclosure of differences between “Phase I <u>Airfield</u> ” and “Phase I <u>Master Plan</u> ” and probable negative impact on legality of AIP and PFC funding.

¹ Per Attachment B, p. 5 to *FAA LOI Analysis and Review*

² Id.

³ The PFC component of the Phase I Airfield estimate of \$2.88 billion has been estimated by Chicago at \$650 million (\$599 million in PFC bonds and \$51 million “Pay as You Go”). However, because Chicago’s future PFC proceeds are already committed to other projects far into the future, Chicago must pay significant interest charges to obtain net usable PFC bond proceeds for the Phase I Airfield project. For example, Chicago’s notice of intent to impose PFC’s for the “Phase I Airfield” project states that it needs over \$1 billion in PFC charges to net \$500 million in usable proceeds for the capital costs of the \$2.88 billion “Phase I Airfield” project.

⁴ As you know, in order for FAA to authorize PFC funds, the project for which PFC funds are sought have independent requirements under 49 U.S.C. §40117 and must also meet the requirements of 49 U.S.C. §47106, because in order to receive PFC authorization, the project must also meet the requirements for AIP grants under §47106. See 49 U.S.C. §§ 40117(b); 40117(a)(3)(A). Thus, when Chicago applies for the billion or more dollars for PFC authorization, that application will face many of the same problems that infect Chicago’s application and FAA’s actions on AIP funding.

TABLE ONE CONTINUED

Total Cost	Funding Sources	Funding amount	Funding Commitment
Phase I Master Plan			
\$3.926 billion in 2005 dollars ⁵			
Incremental additional cost of Phase I Master Plan over "Phase I Airport" w/o people mover \$1.082 billion – shortfall does not include some portion of people mover cost, the total cost of which Chicago estimates at more than \$450 million	No funding source identified by FAA or Chicago	\$1.082 billion	No funding commitment by Majority In Interest Airlines – No MII approval of these elements.
Cost of People Mover Segment from United Terminal 1 Concourse C to Satellite Terminal	No funding source identified by FAA or Chicago	Unknown and undisclosed	No funding commitment by Majority In Interest Airlines – No MII approval of this element.

⁵ This amount in 2005 dollars derived from 2001 dollar cost of Phase I Master Plan (\$3.532 billion) contained in September 27, 2005 Chicago Supplemental Benefit-Cost Study, Table B-1, p. 44 using 2.679% inflation rate. This \$3.936 billion does not include the cost of the people mover system to get passengers to the proposed and required Western Satellite Concourse near the current Terminal One (Concourse C). For clarity purposes the Western Satellite Concourse is not the much discussed "Western Terminal 7" proposed near the western boundary of the airport.